

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

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4 UNITED STATES OF AMERICA,

5 Plaintiff,

6 v.

7 MITCHELL PULIDO,

8 Defendant.
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Case No. 2:11-CR-00102-APG-CWH

**ORDER GRANTING CERTIFICATE
OF APPEALABILITY**

10 I denied defendant Mitchell Pulido's motion to correct his sentence under 28 U.S.C.
11 § 2255. ECF No. 77. To appeal that order, Pulido must receive a certificate of appealability.¹ To
12 obtain that certificate, Pulido "must make a substantial showing of the denial of a constitutional
13 right, a demonstration that . . . includes showing that reasonable jurists could debate whether (or,
14 for that matter, agree that) the petition should have been resolved in a different manner or that the
15 issues presented were adequate to deserve encouragement to proceed further."² This standard is
16 "lenient."³

17 When applying the "hopeless tangle" "of inconsistent case law" that makes up the
18 categorical test, reasonable jurists often disagree.⁴ Although I follow the Ninth Circuit's lead in
19 holding that Pulido's convictions qualify as crimes of violence, other courts have held otherwise.
20 I thus grant Pulido's request for a certificate of appealability.

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25 ¹ 28 U.S.C. § 2253(c)(1)(B); Fed. R. App. P. 22(b)(1); 9th Cir. R. 22-1(a).

26 ² *Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000) (quotation omitted).

27 ³ *Hayward v. Marshall*, 603 F.3d 546, 553 (9th Cir. 2010) (en banc).

28 ⁴ *United States v. Ladwig*, 192 F. Supp. 3d 1153 (E.D. Wash. 2016) (noting that this test
"has stymied law clerks and judges alike in a morass of inconsistent case law").

1 IT IS THEREFORE ORDERED that the defendant is granted a certificate of
2 appealability.

3 DATED this 16th day of May.

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6 ANDREW P. GORDON
7 UNITED STATES DISTRICT JUDGE
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